



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/171765

PRELIMINARY RECITALS

Pursuant to a petition filed February 1, 2016, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to utilize a tax intercept to recover a FoodShare (FS) overpayment, a hearing was held on February 24, 2016, by telephone.

The issue for determination is whether the agency correctly intercepted petitioner's tax refund to recover an overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. In 2014 and 2015 petitioner's daughter D.G. received FS for a household that included her two children and D.G.'s father. Although D.G. did not report it, petitioner also lived in the home during that period.

3. In late 2014 the county began an investigation into the household circumstances. In April, 2015 the investigation report was filed, concluding that the household consisted of petitioner, D.G., the two children, and D.G.'s uncle. D.G.'s father was found to be living in [REDACTED]
4. By two notices dated May 7 and May 8, 2015, the county informed petitioner that she was liable for an FS overpayment issued to D.G. in the amount of \$5,246 during the period June 1, 2014 through March 31, 2015, claim no. [REDACTED], due to the failure to report accurate household members. Petitioner and D.G. were both listed as liable parties. The notices stated that any appeal of the determination must be filed within 90 days of the notice. No appeal was filed.
5. The county agency sent three dunning notices to petitioner, but to an address on [REDACTED], [REDACTED]. On October 16, 2015, the PACU sent a notice informing petitioner that it intended to utilize a tax intercept to recover the overpayment. That notice was sent to the [REDACTED] address. Petitioner did not receive any of the mail sent to the [REDACTED] address.
6. Petitioner has not lived at the [REDACTED] address. It is unknown how the agency obtained that address.
7. Petitioner filed this appeal after her tax refund was intercepted.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FS, and Medical Assistance. The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Petitioner's appeal of the overpayment is untimely. Petitioner testified that she did not receive the overpayment notices, but they were sent to petitioner's address and not returned. I note also that on April 8, 2015 the agency sent petitioner a letter asking her to provide pay stubs. There was a lot of mail going to petitioner's address concerning the overpayment, and it is hard to believe that petitioner received none of it. It is possible that D.G. intercepted the mail, but that would make it an issue between D.G. and petitioner; the agency could not be held responsible for D.G.'s malfeasance.

That said, I must order the PACU to return the intercepted tax refund. The Department's FS Handbook, §7.3.2.10 sets out the parameters for utilizing a tax intercept. The collection system must send three dunning notices without payment being made. The PACU then must send a notice of the intent to intercept taxes. The tax intercept notice must be sent to the last known address. Wis. Stat., §49.85(3)(a).

In this instance neither the dunning notices nor the tax intercept were sent to the address at which petitioner resided or a last known former address. Petitioner thus was not given the opportunity to establish a repayment agreement (I note that there is no repayment agreement in the record so it is unknown where one was sent).

CONCLUSIONS OF LAW

1. Petitioner's appeal of an FS overpayment determined in May, 2015 was untimely.
2. Any money recovered from petitioner with the tax intercept must be returned to her because the tax intercept was not implemented correctly.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to take appropriate steps to return to petitioner any funds applied to overpayment claim no. [REDACTED] that were obtained by the PACU through the intercept of petitioner's income tax refund. The agency shall take the action within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of March, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 9, 2016.

La Crosse County Department of Human Services
Public Assistance Collection Unit